UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT OF CALIFORNIA

RON G. VOSS, a natural person, Plaintiff, vs. KNOTTS et al., Defendants.	CASE NO. 11-CV-0842-H (WMC) **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

On May 7, 2012, Defendant Jerry E. Knotts ("Defendant Knotts") filed a motion for summary judgment. (Doc. No. 49.) On May 9, 2012, Defendants Electronic Arts Inc. ("Electronic Arts"), Procter & Gamble Manufacturing Company ("Procter & Gamble"), Viacom Inc., and Viacom International Inc. (collectively "Viacom") (collectively "Defendants") filed a notice of joinder in Defendant Knotts' motion for summary judgment. (Doc. Nos. 50 & 51.) On May 21, 2012, Plaintiff Ron G. Voss ("Plaintiff" or "Voss") filed a response in opposition to Defendant's motion. (Doc. No. 53.) On May 25, 2012, Defendant Knotts filed a reply. (Doc. No. 54.)

The Court, pursuant to its discretion under Local Rule 7.1(d)(1), determines this matter is appropriate for resolution without oral argument, submits the motion on the parties' papers, and vacates the hearing. For the following reasons, the Court grants Defendant's motion for summary judgment.

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Background

Before March 17, 2005, Plaintiff wrote a treatment entitled, "Cyber Sports Championship Challenge" (the "Work"). (Doc. No. 10, First Amended Complaint ("FAC"), ¶ 10-13.) The Work included a game to be played by an interactive network of video "gamers" who would compete with one another in a series of virtual sports leagues. (Id.) Plaintiff filed a registration for a copyright in the Work with the United States Copyright Office. (Id., ¶ 11-12.) The Copyright Office received Plaintiff's completed application form, nonrefundable filing fee, and nonreturnable deposit of the Work. (Id.) Plaintiff alleges that he has remained the sole owner of the copyright since March 17, 2005. (Id., ¶ 13.)

Seven months after Plaintiff allegedly wrote the Work, Plaintiff and his wife filed a petition for Chapter 7 bankruptcy.[1] (See Doc. No. 49, Exs. G-J.) Plaintiff did not list the Work as an asset in his original or amended schedules in the Voss Bankruptcy Case. (Id., Ex. I.) Instead, Plaintiff affirmatively declared under penalty of perjury that he owned no copyrights. (Id., Ex. H.) The trustee in bankruptcy determined it was a "no asset" case. Thus, Plaintiff and his wife's debts were discharged, and the trustee abandoned the assets back to the debtors, meaning Plaintiff and his wife. (See id., Exs. J, K.)

Summary Judgment Standard

Summary judgment is appropriate under Rule 56 of the Federal Rules of Civil Procedure if the moving party demonstrates the absence of a genuine issue of material fact and entitlement to judgment as a matter of law. Celotex Corp. v. Catrett, 477 U.S. 317, 322 (1986). A fact is material when, under the governing substantive law, it could affect the outcome of the case. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248 (1986); Freeman v. Arpaio, 125 F.3d 732, 735 (9th Cir. 1997). A dispute is genuine if a reasonable jury could return a verdict

[1]The Court takes judicial notice pursuant to Fed. R. Evid. 201(b) of the online docket for United States Bankruptcy case In re Ronald Grayson Voss in the Central District of California, Bankruptcy Case No. 1:0-bk-20522-GM ("Voss Bankruptcy Case"), the amended declaration filed by Ronald Grayson Voss in the Voss Bankruptcy Case, the report of the trustee filed by Trustee Amy L. Goldman in the Voss Bankruptcy Case, and the order of discharge in the Voss Bankruptcy Case. (See Doc. No. 49, Exs. F-G, I-K.)

for the nonmoving party. Anderson, 477 U.S. at 248.

A party seeking summary judgment bears the initial burden of establishing the absence of a genuine issue of material fact. Celotex, 477 U.S. at 323. The moving party can satisfy this burden in two ways: (1) by presenting evidence that negates an essential element of the nonmoving party's case; or (2) by demonstrating that the nonmoving party failed to establish an essential element of the nonmoving party's case on which the nonmoving party bears the burden of proving at trial. Id. at 322-23. "Disputes over irrelevant or unnecessary facts will not preclude a grant of summary judgment." T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass'n, 809 F.2d 626, 630 (9th Cir. 1987). Once the moving party establishes the absence of genuine issues of material fact, the burden shifts to the nonmoving party to set forth facts showing that a genuine issue of disputed fact remains. Celotex, 477 U.S. at 322. The nonmoving party cannot oppose a properly supported summary judgment motion by "rest[ing] on mere allegations or denials of his pleadings." Anderson, 477 U.S. at 256. "The 'opponent must do more than simply show that there is some metaphysical doubt as to the material fact.'" Kennedy v. Allied Mut. Ins. Co., 952 F.2d 262, 265-66 (9th Cir. 1991) (citing Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986)). Furthermore, the nonmoving party generally "cannot create an issue of fact by an affidavit contradicting his prior deposition testimony." Kennedy, 952 F.2d at 266; see Foster v. Arcata Assocs., 772 F.2d 1453, 1462 (9th Cir. 1985), cert. denied, 475 U.S. 1048 (1986); Radobenko v. Automated Equip. Corp., 520 F.2d 540, 543-44 (9th Cir. 1975).

When ruling on a summary judgment motion, the court must view all inferences drawn from the underlying facts in the light most favorable to the nonmoving party. Matsushita Elec. Indus. Co., 475 U.S. at 587. The Court does not make credibility determinations with respect to evidence offered. See T.W. Elec., 809 F.2d at 630-31 (citing Matsushita, 475 U.S. at 587). Summary judgment is therefore not appropriate "where contradictory inferences may reasonably be drawn from undisputed evidentiary facts." Hollingsworth Solderless Terminal Co. v. Turley, 622 F.2d 1324, 1335 (9th Cir. 1980).

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Discussion

Defendant argues that Plaintiff's failure to list his alleged copyright on a schedule of his assets during a personal bankruptcy bars this action. (Doc. No. 49.) The Court agrees.

An "estate" is created when a bankruptcy petition is filed. 11 U.S.C. § 541(a); In re Fitzsimmons, 725 F.2d 1208, 1210 (9th Cir. 1984). "As a general matter, upon the filing of a petition for bankruptcy, 'all legal or equitable interests of the debtor in property' become the property of the bankruptcy estate and will be distributed to the debtor's creditors." Rousey v. Jacoway, 544 U.S. 320, 325 (2005) (quoting 11 U.S.C. § 541(a)(1)).

The bankruptcy code places an affirmative duty on debtors to schedule their assets and liabilities. 11 U.S.C. § 521(1). Thus, Plaintiff Voss had an affirmative duty to schedule his alleged copyright as an asset when he filed for bankruptcy. "It is settled that the debtor has a duty to prepare these bankruptcy schedules and statements 'carefully, completely, and accurately' and bears the risk of nondisclosure." Diamond Z Trailer, Inc. v. JZ L.L.C., 371 B.R. 412, 417 (B.A.P. 9th Cir. 2007) (quoting Cusano v. Klein, 264 F.3d 936, 946-49 (9th Cir. 2001)). "The schedules require full, candid, and complete reporting of the facts, so that interested parties can be in a position to argue for or against the legal conclusion." Diamond Z Trailer, Inc., 371 B.R. at 417. "If [the debtor] failed properly to schedule an asset, including a cause of action, that asset continues to belong to the bankruptcy estate and did not revert to [the debtor]." Cusano, 264 F.3d at 945-46 (citing Stein v. United Artists Corp., 691 F.2d 885, 893 (9th Cir. 1982) (holding that only property "administered or listed in the bankruptcy proceedings" reverts to the bankrupt). Here, Plaintiff filed for bankruptcy approximately seven months after allegedly authoring the Work that Plaintiff now relies on for his infringement lawsuit. (See Doc. No. 49, Ex. G.) Plaintiff did not list the Work as an asset in his original or amended bankruptcy schedules. (Id., Ex. I.) Instead, Plaintiff affirmatively declared under penalty of perjury that he owned no copyrights. (Id., Ex. H.) Plaintiff's failure to list the Work as an asset and his affirmative statement that he owned no copyrights precludes Plaintiff's claims in the present action. By failing to properly schedule his alleged copyright asset, the copyright asset continues to belong to the bankruptcy estate and did not revert to Plaintiff.

Cusano, 264 F.3d at 945-46; see also Stein, 691 F.2d at 893.

Although there are "no bright-line rules for how much itemization and specificity is required" in a bankruptcy schedule, Plaintiff Voss was required to be as particular as is reasonable under the circumstances. Cusano, 264 F.3d at 946 (quoting In re Mohring, 142 B.R. 389, 395 (Bankr. E.D. Cal. 1992)). Under the circumstances, it would have been reasonable for Plaintiff Voss to list the copyright because Plaintiff Voss filed for bankruptcy seven months after allegedly authoring the Work. Moreover, in Cusano, the court held that a plaintiff sufficiently described his copyrights and right to royalty payments for songs written by including "songrights in . . . Songs written while in the band known as 'KISS'" in his bankruptcy schedule. 264 F.3d at 946-47. The Cusano court further held:

> Although it would have been more helpful for Cusano to break down the description further so that it named songs, albums, and dates of and parties to royalty and copyright agreements, the additional detail would not have revealed anything that was otherwise concealed by the description as it was, which provided inquiry notice to affected parties to seek further detail if they required it.

Cusano, 264 F.3d at 946-47. Unlike the Plaintiff in Cusano, Plaintiff Voss did not list the copyright in his bankruptcy schedules, and instead, affirmatively declared under penalty of perjury that he owned no copyrights. (See Doc. No. 49, Ex. H.) Thus, Plaintiff Voss failed to be as particular as is reasonable under the circumstances in itemizing and specifying his copyright asset. Cusano, 264 F.3d at 946. Accordingly, the Court concludes that by failing to properly schedule his asset in the Work and the alleged copyright, these assets continue to belong to the bankruptcy estate and did not revert to Plaintiff Voss. Id. at 945-46.

Because Plaintiff has no ownership interest in the Work or its purported copyrights, Plaintiff lacks standing to pursue the present lawsuit. A plaintiff alleging copyright infringement must have an ownership interest in the subject copyrights, in order to have standing to bring the claim. 17 U.S.C. § 408(a) (stating that only "the owner of copyright or of any exclusive right in the work may obtain registration of the copyright claim"); see Feist Publ'ns, Inc. v. Rural Tel. Serv. Co., 499 U.S. 340, 361 (1991) (explaining that a copyright infringement claim requires proof of ownership of a valid copyright and violation of the

copyright holder's exclusive rights). Plaintiff's lawsuit sounds in copyright infringement, and because Plaintiff does not own an interest in the Work or its alleged copyrights, Plaintiff cannot maintain this action. Accordingly, the Court grants Defendant's motion for summary judgment.

Conclusion

For the foregoing reasons, the Court GRANTS Defendant's motion for summary judgment.

IT IS SO ORDERED.

DATED: May 29, 2012

MARILYN L. HUFF, District Judge
UNITED STATES DISTRICT COURT